

Palaparthi (Migration) [2022] AATA 2406 (8 July 2022)

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DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANTS:	Mrs Archana Palaparthi Mr Srinivasa Balaji Palaparthi Master Kushaal Palaparthi
REPRESENTATIVE:	Mr Oszkar Denes
CASE NUMBER:	2111629
HOME AFFAIRS REFERENCE(S):	BCC2019/3597028
MEMBER:	Wan Shum
DATE:	8 July 2022
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the applications for Skilled Regional Sponsored (Provisional) visas for reconsideration, with the direction that the first named applicant meets the following criteria for a Subclass 489 – Skilled – Regional (Provisional) visa: • Public Interest Criterion 4020 for the purposes of cl 489.211(3) of Schedule 2 to the Regulations.

Statement made on 08 July 2022 at 1:37pm

CATCHWORDS

MIGRATION – Skilled Regional Sponsored (Provisional) (Class SP) visa – Subclass 489 (Skilled – Regional (Provisional)) – bogus document or false or misleading information given in visa application – 12 months of relevant skilled employment in Australia – letter from employer states 13 months of employment but movement records show applicant offshore for 3 months in that period – letter given in relation to previous application and certifying body relied on it in relation to current application – certifying body not a party referred to in criterion – no points claimed for Australian employment experience or use of letter in current application – members of family unit – no jurisdiction for secondary applicant child – decision under review remitted

LEGISLATION

Migration Act 1958 (Cth), ss 5(1), 65

Migration Regulations 1994 (Cth), r 4.02(la)(ii), Schedule 2, 489.211(3), Schedule 4, criterion 4020(1)

CASES

Arora v MIBP [2016] FCAFC 35

Batra v MIAC [2013] FCA 274

Trivedi v MIBP [2014] FCAFC 42

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

4. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 20 August 2021 to refuse to grant the applicants Skilled Regional Sponsored (Provisional) visas under s 65 of the *Migration Act 1958* (Cth) (the Act).
5. The applicants applied for the visas on 19 July 2019. The delegate refused to grant the visas on the basis that the first named applicant (the applicant) did not satisfy Public Interest Criterion 4020 and therefore did not satisfy cl 489.211(3) of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations).
6. The applicants sought review of those decisions and were represented in relation to the review. The Tribunal does not have jurisdiction to review the refusal of the visa for the third named applicant as he was not sponsored or nominated in accordance with reg 4.02(4)(a) (ii).
7. The first and second named applicants appeared before the Tribunal by videoconference using the Microsoft Teams platform on 1 June 2022 to give evidence and present arguments. The representative was present from a different location.
8. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

BACKGROUND

9. The information before the Tribunal is that the applicant came to Australia in July 2014 holding a student visa and completed a Master of Professional Accounting at Charles Sturt University. She held a Subclass 485 visa from 7 November 2016 to 7 November 2018 and applied for a Subclass 457 visa on 30 June 2017 sponsored by TaxNET Australia Pty Ltd (TaxNET) which was withdrawn in January 2018. Her next application was for a Subclass 489 visa, which requires submission of an Expression of Interest (EOI) as well as a nomination by a Regional Certifying Body. The applicant was recommended for state sponsorship from NSW by Regional Development Australia Orana Inc (RDA Orana) for the first time on 15 October 2018 and she then lodged her first Subclass 489 application with the Department on 23 October 2018. According to the submissions provided on review, that first application was withdrawn sometime between June and July 2019 (response to NJ letter states 15 May 2020). It appears that the applicant then submitted a new EOI on 6 June 2019 and again sought nomination by RDA Orana which occurred on 11 July 2019, and she was invited to apply for the second Subclass 489 visa on 19 July 2019 which is the same day the applicants lodged their second Subclass 489 visa application with the Department. That is the application the subject of this review.
10. As required for the application of a Subclass 489 visa, it is necessary for the applicant to nominate a skilled occupation and points are allocated for age, English language, educational and employment qualifications amongst other priorities set out in Part 6D. The applicant nominated the occupation of Accountant (ANZSCO 221111) for which the Institute of Public Accountants (IPA) is one of the accounting bodies specified as a skills assessing authority. Information from the Departmental file reflects that there are 2 assessments made by IPA in respect of the applicant, one was an assessment that her application was suitable for the nominated occupation dated 8 August 2018 while the other was an assessment of her skilled employment dated 13 August 2018. It appears that the document identified as

containing information that was false was the assessment in respect of the claim that the applicant had at least 12 months of relevant skilled employment in Australia.

11. The delegate identified that the document containing false or misleading information was an employment letter from TaxNET which states that the applicant was employed there for 13 months, but Departmental records indicated that the applicant was offshore for 3 months of that time, with the first 56 days offshore only 17 days after she claimed to have started working at TaxNET. The delegate considered the applicant's comments, which included that the employer had poor record keeping, but ultimately was not satisfied that the employment claims at TaxNET were genuine. The delegate considered that the skills assessment was obtained because of a false or misleading statement and concluded that it was a bogus document and was not satisfied that she met Public Interest Criterion 4020(1).

CONSIDERATION OF CLAIMS AND EVIDENCE

12. The issue in this review is whether the visa applicant meets Public Interest Criterion 4020 (PIC 4020) as required by cl 489.211(3) for the grant of the visa. Broadly speaking, this requires that:
 - there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made: PIC 4020(1); and
 - the applicant and each member of the family unit has not been refused a visa because of a failure to satisfy PIC 4020(1) during the period starting 3 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2) and (2AA); and
 - the applicant satisfies the Minister as to his or her identity: PIC 4020(2A); and
 - neither the applicant nor any family unit member has been refused a visa because of a failure to satisfy PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2B) and (2BA).
13. The requirements in PIC 4020(1) and (2) can be waived if there are certain compelling or compassionate reasons justifying the granting of the visa: PIC 4020(4). However, this waiver does not apply to the identity requirements in PIC 4020(2A) and (2B). PIC 4020 is extracted in the attachment to this decision.

Has the applicant given, or caused to be given, a bogus document, or information that is false or misleading in a material particular?

14. The term 'information that is false or misleading in a material particular' is defined in PIC 4020(5) and the term 'bogus document' is defined in s 5(1) of the Act (see the attachment to this decision). In contrast to the definition of 'information that is false or misleading in a material particular' in PIC 4020(5), the reference in the definition of bogus document to a document that was obtained because of a 'false or misleading' statement has no requirement that it be relevant to a criterion for the grant of the visa: *Arora v MIBP* [2016] FCAFC 35; *Batra v MIAC* [2013] FCA 274.

15. The requirement in PIC 4020(1) not to provide a bogus document, or false or misleading information, applies whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant: PIC 4020(3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly.
16. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision: *Trivedi v MIBP* [2014] FCAFC 42.
17. On review, the representative identified the issue as being whether the applicants have given to the delegate a bogus document in relation to the July 2019 visa application or in relation to a visa that the applicants held in the 12 months period before the July 2019 application was made. While claiming that the applicants did not provide a false document to the IPA for the applicant's skilled employment assessment, it was conceded that the document appearing on pages 198–199 of the file released to the applicant contained false information and was provided to the IPA by their migration agent in India. This document is the employment reference letter allegedly from TaxNET Australia dated 23 May 2018 stating that "[the applicant] has worked as a Full Time Permanent Employee with us as a General Accountant from 01st Jan 2017 to 31st Jan 2018". During the hearing, the applicant claimed that after returning to India in February 2018 and having sat an English test, she then contacted an agent in India to assist with obtaining the skills assessment from IPA as she could not do this directly herself. She maintained that she had worked at TaxNET Australia for the period set out in the reference letter, but that it had not correctly identified periods of unpaid and paid work. While the applicants appear to concede that the employment reference letter contained false and/or misleading information, they argue that it was only ever given to the IPA. While the resulting assessment, being the assessment of whether the applicant had relevant skilled employment (employment assessment), arguably meets the definition of 'bogus document', the submissions identify the critical point in this case being that the applicants had not given, and had not caused to be given, the allegedly bogus document of the IPA skilled employment assessment to anyone in relation to the July 2019 visa application or in relation to a visa that the applicants held in the 12-month period before the July 2019 visa application was made.
18. It was submitted that the IPA skilled employment assessment was created in the context of an earlier visa application and that neither the applicants nor their agents provided that document to the delegate and they did not ask or instruct the IPA to provide that document to the delegate.
19. In support of this submission, reference was made to the responses given on the July 2019 visa application to the questions regarding the expression of interest date. It was submitted that the July 2019 visa application was clearly based on a fresh NSW nomination and not on the first NSW nomination from October 2018. It was further submitted that the July 2019 visa application was accompanied by 9 supporting documents at the time of its lodgement but that the IPA skilled employment assessment was not one of those documents.
20. In addition, it was submitted that in response to the delegate's request (dated 12 November 2019) for the applicant's skills assessment, the applicants' migration agent provided the IPA qualifications assessment dated 8 August 2018. He did not provide the IPA skilled employment assessment.
21. Finally, it was emphasised that the applicants do not know how the delegate obtained the IPA skilled employment assessment but assume that the document was obtained by the

delegate when he undertook verification checks and that the IPA gave that document to the delegate from its records. It was submitted that the applicants did not require that document, given that there was no need for it in the second NSW nomination, nor for the purpose of satisfying any visa criterion or for claiming any points in the July 2019 visa application. The IPA skilled employment assessment is a document created in the context of an earlier visa application and which the applicants have not used and have not given to anyone, and which the IPA seems to have released of its own volition to the delegate. The applicant claims that she never provided the IPA skills assessment directly to RDA Orana, however the records of RDA Orana reflect that she did provide it as part of the bundle of supporting documents given for the August 2018 application for nomination.

22. In summary, the submission seeks to rely on there having been no attempt in the second 489 visa application made by the applicant to obtain points for Australian employment experience. Under the points test in Schedule 6D, points are allocated where an applicant has been employed in Australia in the nominated skilled occupation, or a closely related skilled occupation, for a period totalling the number of months specified for the item in the 10 years immediately before the day on which the application was made. 'Employed' for these purposes is paid employment.
23. The Tribunal accepts that the applicant did not rely on Australian employment experience for her second 489 visa application. This is reflected on the application form and the EOI summary provided to the Tribunal by RDA Orana. It also accepts that she did not give a copy of the IPA skilled employment assessment in relation to the second 489 visa application. The copy of the IPA skills employment assessment before the delegate in this matter was obtained directly from IPA following verification checks. It appears that the skilled employment assessment issued by IPA was only given to RDA Orana in August 2018.
24. As to whether she or her migration agent at the time gave the IPA skills employment assessment to RDA Orana in the July 2019 application, it was submitted that before the second 489 visa application was lodged in July 2019, the applicants applied for a fresh NSW nomination (being the second NSW nomination) on 6 June 2019 through their representative at the time. In the copy of the NSW state nomination application form provided to the Tribunal which was attached to the submissions, the fields in relation to Australian skilled employment were left blank, with the then representative's name typed into the space for the signature and also the date of '06/06/2019' typed. However, based on the Tribunal's own enquiries with RDA Orana, it cannot be confirmed that the copy of the application form alleged to have been submitted for the second NSW nomination was ever submitted to that body.
25. Instead, when nominating the applicant again in July 2019, the certifying body appeared to have relied upon approval of the previous application made in August 2018, which the applicant said she made directly to the regional certifying body herself. For the August 2018 application, she did include details of 12 months' employment experience at TaxNET on the 'NSW Nomination Application Form R' and RDA Orana have confirmed that they hold a copy of the IPA skills employment assessment dated 13 August 2018 on their files. The Tribunal therefore concludes that the applicant provided a copy of the IPA skills employment assessment to RDA Orana in respect of the August 2018 application for nomination by a state or territory, and it appears that this was likely to have been taken into account when the nomination was approved in October 2018. It is also possible that it was taken into account, even if indirectly, for the later nomination in July 2019 as their records reflect that the 2018 application form was part of the file held on the applicant.
26. Notwithstanding this, RDA Orana is not a party referred to in PIC 4020(1), being "the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical Officer of the Commonwealth". It is possible that RDA Orana may wish to withdraw the nomination if made

aware of the applicant's concession that the employment reference letter upon which the IPA based its assessment of her skilled employment contained misleading information.

27. Having considered all the information available to the Tribunal, there is nothing before it to support a conclusion that the applicant had provided a copy of the IPA skills employment assessment to "the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical Officer of the Commonwealth" for the second 489 visa application which was lodged on 19 July 2019.
28. The applicants have conceded in the submissions to the Tribunal that the employment reference letter from TaxNET is a 'bogus document', and when asked about this at the hearing, the applicant explained that she did work there but the letter failed to differentiate between the periods of unpaid and paid work. However, even where the Tribunal has a reasonable suspicion that the employment reference letter is 'counterfeit or has been altered by a person who does not have authority to do so', it must then consider whether there is no evidence that an applicant has given or caused it to be given to a party listed in PIC 4020(1) in relation to the visa application or a visa held in the 12 months prior. In this case, the employment reference letter was given to IPA which is a relevant assessing authority as defined. However, the skilled employment assessment made by IPA was not given in relation to the second 489 visa application, but the first 489 visa application, which was subsequently withdrawn. Therefore, giving or causing that document to be given to IPA does not appear to meet the terms of PIC 4020(1) as it was not given in relation to the visa application the subject of this review.
29. As to whether the document was given for a visa held in the 12 months prior to the second 489 visa application, in the 12 months prior to that application, the applicant held a Subclass 485 visa until 7 November 2018, and a Bridging visa A after that point. There is no evidence before the Tribunal that the applicant provided either the employment reference letter or the IPA skills employment assessment of 13 August 2018 in relation to the Subclass 485 visa, which was granted before the date of the employment letter and the date the IPA skills employment assessment was issued. The Tribunal accepts that therefore it cannot be said that the applicant gave, or caused to be given, a bogus document for the (second) 489 visa application, or for a visa held in the 12 months prior, on the basis of that IPA skills employment assessment.
30. The Tribunal has also considered whether the information upon which the IPA skills employment assessment was based, that is, the claimed employment as an Accountant with TaxNET from 1 January 2017 to 31 January 2018, gave rise to the provision of a bogus document or "information that is false or misleading in a material particular" in relation to the visa application or a visa held in the 12 months before the visa application was made; and, if so, whether it was given by the applicant or caused to be given to "the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical Officer of the Commonwealth".
31. In this regard, the Tribunal notes that the applicant claims on review that she did commence work from 1 January 2017 at TaxNET but that it was on a voluntary capacity and was not paid work until May 2017. She maintains that she ceased employment there on 31 January 2018. She has not provided any evidence other than that which was provided to the Department to substantiate this claim, of which a number of inconsistencies were identified as set out in the decision record.
32. According to the applicant's own evidence, she withdrew from the first 489 visa application shortly after further documentation was requested from the Department in respect of that application. The response to the Department's natural justice letter dated 14 September 2021 from the previous representative expressly states that the "sole reason" a new EOI for the Subclass 489 visa was submitted and visa application was made was as follows: "to

avoid the employment part altogether ... due to lack of internal management data of the employer, her previous visa [had] to be withdrawn". The applicant claimed at the hearing that she did not realise that voluntary work could not be counted for the purposes of claiming points for Australian employment experience and emphasised that she did not need any Australian work experience for the visa. The Tribunal has doubts as to whether there was a period of voluntary work prior to the claimed period of paid employment as this explanation was not provided to the Department when given the opportunity to do so at an earlier point.

33. This claimed employment at TaxNET appears on the visa application form under the heading of employment history and appears on her resume as well as on Form 80 (signed and dated 19 July 2019). It is possible that the RDA Orana nominated the applicant for the second time in July 2019 having relied at least in part on this claim of relevant work experience in her nominated occupation. However, Form 80 seeks details about paid and unpaid/voluntary work which in the Tribunal's view means that the information could not be said to be false and/or misleading. Nor is it clear from the visa application form that employment is paid work only. In terms of being listed on her resume, the claimed employment with TaxNET appears under the headings 'Australian Experience – Work Profile' and there is no indication of whether the employment is paid or unpaid. It does not appear to the Tribunal that the claim to have worked at TaxNET from her resume meets the definition of 'bogus document'. Although, in circumstances where the applicants had become aware of the possible issue with claimed employment experience shortly after a request was made for further information to justify the claimed work experience as an Accountant and then subsequently withdrew the first 489 visa application, the Tribunal has concerns as to whether she did work as an Accountant at TaxNET for the period claimed. Nonetheless, it does not consider that it has sufficiently probative evidence to conclude that she did not.
34. Having carefully considered the circumstances of this case, it does not appear to the Tribunal that the applicant gave or caused to be given to any of the parties listed in PIC 4020(1) a bogus document or false or misleading information in a material particular in relation to the (second) 489 visa application or the Subclass 485 visa application, being the visa she held in the 12 months prior.
35. Therefore, despite concerns regarding the applicant's claimed employment at TaxNET, the Tribunal finds that she meets PIC 4020(1).

Has a visa previously been refused on the basis of a failure to satisfy PIC 4020(1)?

36. PIC 4020(2) requires the Tribunal to be satisfied that the applicant and each member of the family unit have not been refused a visa because of a failure to satisfy PIC 4020(1) in the period commencing 3 years before the application was made and ending when the visa is granted or refused. This requirement does not apply to a person who was under 18 at the time the application for the refused visa was made: PIC 4020(2AA).
37. It does not appear that the applicant or any member of the family unit (as defined in reg 1.12) have been refused a visa in the relevant period because of a failure to satisfy PIC 4020(1).
38. Therefore, PIC 4020(2) is met.

Has the applicant satisfied the identity requirements?

39. PIC 4020(2A) requires an applicant satisfy the Tribunal as to his or her identity. The Tribunal has sighted a copy of the applicant's passport. There is nothing before the Tribunal to suggest that the applicant is not who she claims to be. Therefore, the applicant meets PIC 4020(2A).

Has a visa previously been refused on the basis of a failure to satisfy PIC 4020(2A)?

40. PIC 4020(2B) requires that neither the applicant nor any family unit member have been refused a visa because of a failure to satisfy the identity requirements in PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused. This requirement does not apply to a person who was under 18 at the time the application for the refused visa was made: PIC 4020(2BA).
41. There is nothing before the Tribunal that indicates that the applicant or any member of the family unit have been refused a visa in the relevant period because of a failure to satisfy PIC 4020(2A). Therefore, PIC 4020(2B) is met.
42. Given the above findings, the applicant satisfies PIC 4020 for the purposes of cl 489.211(3).
43. The appropriate course is to remit the visa application to the Minister to consider the remaining criteria for the visa, which should include assessment of whether the other applicants meets the secondary criteria.

DECISION

44. The Tribunal remits the applications for Skilled Regional Sponsored (Provisional) visas for reconsideration, with the direction that the first named applicant meets the following criteria for a Subclass 489 – Skilled – Regional (Provisional) visa:
 - Public Interest Criterion 4020 for the purposes of cl 489.211(3) of Schedule 2 to the Regulations.

Wan Shum
Member

ATTACHMENT

Migration Regulations 1994

Schedule 2, Part 489 (extract)

489.22 Criteria for First Provisional Visa stream

Note: These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 489 visa in the First Provisional Visa stream.

489.221

The applicant was invited, in writing, by the Minister to apply for the visa.

489.222

- (1) At the time of invitation to apply for the visa:
- (a) the relevant assessing authority had assessed the applicant's skills as suitable for the applicant's nominated skilled occupation; and
 - (b) the assessment was not for a Subclass 485 - Temporary Graduate visa; and
 - (c) if the assessment specified a period during which the assessment was valid, and the period did not end more than 3 years after the date of the assessment—the period had not ended; and
 - (d) if paragraph (c) did not apply—not more than 3 years had passed since the date of the assessment.
- (2) If the assessment was made on the basis of a qualification obtained in Australia while the applicant held a student visa, the qualification was obtained as a result of studying a registered course.

489.223

At the time of invitation to apply for the visa, the applicant had competent English.

489.224

- (1) The applicant's score, when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act, is not less than the score stated in the invitation to apply for the visa.
- (2) The applicant's score, when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act, is not less than the qualifying score for that Subdivision.

Note: Subdivision B of Division 3 of Part 2 of the Act provides for the application of a points system under which applicants for relevant visas are given an assessed score based on a prescribed number of points for particular attributes, assessed against the relevant pool mark and pass mark: see sections 92 to 96 of the Act.

The prescribed points and the manner of their allocation are provided for in Division 2.6 and Schedule 6D of these Regulations. Pool marks and pass marks are set from time to time by the Minister by instrument: see section 96 of the Act.

489.225

- (1) The requirements in subclause (2) or (3) are met.
- (2) The nominating State or Territory government agency has not withdrawn the nomination.
- (3) The Minister has accepted the sponsorship of the applicant by a person in the following circumstances:
- (a) the person has turned 18; and
 - (b) the person is an Australian citizen, Australian permanent resident or eligible New Zealand citizen;
 - (c) the person is usually resident in a designated area of Australia;
 - (d) the person is related to the applicant, or the applicant's spouse or de facto partner (if the applicant's spouse or de facto partner is an applicant for a Subclass 489 visa), as:
 - (i) a parent; or
 - (ii) a child or step-child; or

- (iii) a brother, sister, adoptive brother, adoptive sister, step-brother or step-sister; or
 - (iv) an aunt, uncle, adoptive aunt, adoptive uncle, step-aunt or step-uncle;
 - (v) a nephew, niece, adoptive nephew, adoptive niece, step-nephew or step-niece; or
 - (vi) a grandparent; or
 - (vii) a first cousin;
- (e) each member of the family unit of the applicant who is an applicant for a Subclass 489 visa is sponsored by that person.

489.226

- (1) The applicant satisfies public interest criterion 4005.
- (2) Each member of the family unit of the applicant who is an applicant for a Subclass 489 visa satisfies public interest criterion 4005.
- (3) Each member of the family unit of the applicant who is not an applicant for a Subclass 489 visa satisfies public interest criterion 4005 unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.

45.

Schedule 4, PIC 4020

- 4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5 reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
 - (a) the application for the visa; or
 - (b) a visa that the applicant held in the period of 12 months before the application was made.
- (2) The Minister is satisfied that during the period:
 - (a) starting 3 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
 the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).
- (2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (2A) The applicant satisfies the Minister as to the applicant's identity.
- (2B) The Minister is satisfied that during the period:
 - (a) starting 10 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
 neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).
- (2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.
- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:
 - (a) compelling circumstances that affect the interests of Australia; or
 - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;
 justify the granting of the visa.
- (5) In this clause:
 - information that is *false or misleading in a material particular* means information that is:
 - (a) false or misleading at the time it is given; and

- (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

...

Migration Act 1958

s 5 Interpretation

(1) In this Act, unless contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

...